

**California Regional Water Quality Control Board  
Santa Ana Region**

**September 30, 2005**

**ITEM:** 7

**SUBJECT:** Order No. R8-2005-0113, Richland Meadowland, Ltd., Tract 27251,  
City of Moreno Valley

**SUMMARY**

The matter before the Board is to consider adoption of Order No. R8-2005-0113, authorizing the discharge of fill to waters of the State that have been determined to be outside of the U.S. Army Corps of Engineers jurisdiction and not subject to regulation under Clean Water Act Section 404 (non-federal waters).

**BACKGROUND**

California Water Code (CWC) Section 13376 states that, "any person discharging dredge or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with Section 13260." Section 13260(a) of the CWC requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, that could affect the quality of the waters of the State, file a report of waste discharge (ROWD). Under federal Clean Water Act (CWA) Section 401, every applicant for a federal permit or license for any activity that may result in a discharge to waters of the United States must obtain State Water Quality Certification (Certification) that the proposed activity will comply with state water quality standards.

Most Certifications are issued in connection with U.S. Army Corps of Engineers (Corps) CWA Section 404 permit for dredge and fill discharges. The State Water Resources Control Board (SWRCB) and Regional Water Quality Control Boards administer the Certification program in accordance with the requirements of California Code of Regulations Title 23, section 3830 et seq. Since November 2003, all Certifications have been issued by the Executive Officer accompanied by authorization to discharge in accordance with State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification." In the absence of the need to obtain a Certification, the SWRCB has asserted its authority to regulate discharges of dredge and fill to waters of the State under the Porter-Cologne Water Quality Control Act. On May 4, 2004, the State Water Resources Control Board issued Water Quality Order No. 2004-0004-DWQ, "Statewide General Waste Discharge Requirements for Dredge and Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction (Order No. 2004-0004-DWQ). Numeric impact thresholds

**STAFF REPORT**

limit the application of Order No. 2004-0004-DWQ to relatively small discharges of fill.

On June 1, 2005 Regional Board staff received a report of waste discharge for residential Tract 27251 from the agent for Richland Meadowland, Ltd., M.J. Klinefelter GIS and Environmental Consulting (MJK). Richland Meadowland Ltd. is proposing to develop Tract 27251, a 49± acre property located east of Morrison Street between Eucalyptus Avenue and Fir Avenue in the City of Moreno Valley. In their Report, MJK provided a delineation of waters of the U.S. that concluded that the site contained 0.067 acres (731 linear feet) of non-federal waters of the State. The non-federal waters of the State were isolated and, therefore, not deemed to be waters of the U.S. subject to Clean Water Act Section 404 permitting by the U.S. Army Corps of Engineers (Corps) in a letter dated March 24, 2005. Upon review of the Report, Regional Board staff determined that the discharges to the non-federal waters of the State at Tract 27251 would affect beneficial uses and that the Regional Board could not authorize the proposed discharges in accordance with Order No. 2004-0004-DWQ because the discharges exceeded the impact thresholds of that Order.

During the course of reviewing an application for Certification for Tract 31305, Regional Board staff learned that Tracts 31305 and 27251 are both adjacent to one another, both are owned by Richland Meadowland Ltd., and that a significant portion of Tract 27251 drained through a common storm drain system discharging from Tract 31305. In addition, both Tracts effectively function as a single development project in that Tract 31305 is dependent upon the traffic circulation provided by Tract 27251 (see Figure 1). One lot on Tract 31305 is entirely dependent upon a roadway in Tract 27251 and Tract 31305, as a whole, utilizes roadways in Tract 27251 for secondary access. For these reasons, and because Certification applies to any discharge from a project, inclusive of the common storm drain system, Regional Board staff argued that both tracts were subject to Certification. In response, the applicant modified the proposed storm drain system in Tract 31305 so that it was not connected to storm drain inlets in Tract 27251. Consequently, because discharges from 27251 are not conveyed in discharges from 31305, Regional Board staff has determined that the scope of review for Certification should apply only to 31305 and not 27251, as well.

Regional Board staff conducted a site visit on September 7, 2005 and observed that the uppermost portion of the drainage contained riparian willow vegetation that quickly diminished to sparsely scattered mulefat and then ruderal non-native grasses. Visits by biological staff of MJK have not identified the presence of sensitive plant or animal species, including threatened or endangered species. Based on the provided biological reports and staff observations, Regional Board staff has identified wildlife habitat (WILD), and groundwater recharge (GWR) as existing beneficial uses for the on-site drainage.

The discharger has proposed to mitigate for impacts to non-federal waters of the State on Tract 27251 to through an in-lieu payment, equal to the purchase of 0.25 acres, to the Santa Ana Watershed Association (SAWA) to be applied towards the

**STAFF REPORT**

eradication of *Arundo donax*. SAWA is providing for the improvement of the natural functions of the Santa Ana River to benefit wildlife and people through a variety of restoration activities and works in close coordination with the Resource Conservation Districts in the Watershed.

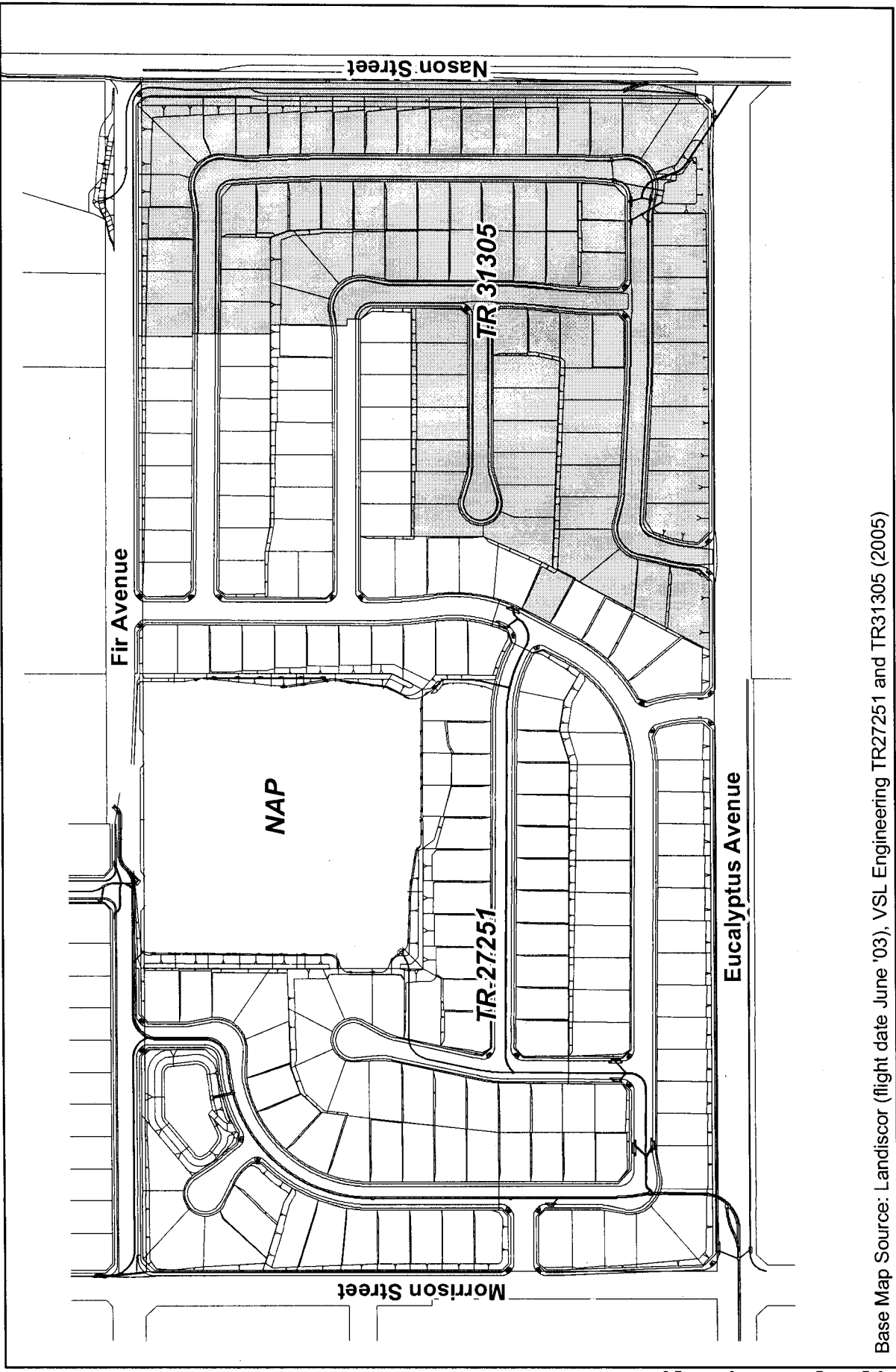
Pursuant to CEQA, a negative declaration was prepared and certified by the City of Moreno Valley. A Notice of Determination was filed on May 13, 1992.

**RECOMMENDATION**

Adopt Order No. R8-2005-0113 as presented.

Comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District  
California Department of Fish and Game  
State Water Resources Control Board, DWQ – Water Quality Certification Unit



Base Map Source: LandisCor (flight date June '03), VSL Engineering TR27251 and TR31305 (2005)

FIGURE 1  
TRACT MAP

Tracts 27251 and 31305  
City of Moreno Valley, CA



**M.J. Klinefelter**  
GIS & ENVIRONMENTAL CONSULTING

California Regional Water Quality Control Board  
Santa Ana Region

Order No. R8-2005-0113

Waste Discharge Requirements

for

Richland Meadowland, Ltd.  
Tract 27251, City of Moreno Valley

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

1. Richland Meadowland, Ltd. (hereinafter, discharger) proposes to develop Tract 27251 in the City of Moreno Valley by building 154 dwelling units on approximately 49 acres located at the southeast corner of Fir Street and Morrison Street in Section 4, Township 3 South, Range 3 West, shown on the U.S. Geological Service *Sunnymead, California* quadrangle (33 deg. 55 min. 59 sec. N/117 deg. 11 min. 35 sec. W).
2. Beginning at a culvert under Fir Street at the north side of Tract 27251 is an ephemeral drainage consisting of 0.067 acres. The drainage extends 731 feet before terminating in a dry-farmed field on the Tract.
3. On January 9, 2001 the United States Supreme Court issued a decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001) 121 S.Ct. 675 (SWANCC) that held that the language of the Clean Water Act (CWA) cannot be interpreted as conferring authority for the federal government to regulate "isolated, intrastate, and non-navigable waters" merely because migratory birds may frequent them. The Court emphasized the states' responsibility for regulating such waters. Consequently, waters of the ephemeral drainage on Tract 27251 are waters of the State but are outside federal jurisdiction.
4. In a letter dated March 24, 2005, the U.S. Army Corps of Engineers issued a determination that the drainage on Tract 27251 is outside of federal jurisdiction (non-federal waters) as the result of its isolated nature.
5. The discharger has committed to mitigate impacts to non-federal waters of the State through an in-lieu payment, equal to the purchase of 0.25 acres, to the Santa Ana Watershed Association (SAWA) to be applied towards the eradication of *Arundo donax*.

6. In compliance with the California Environmental Quality Act, a Negative Declaration was prepared for Tract 27251 and certified by the City of Moreno Valley on May 13, 1992.
7. The waste discharge requirements proposed herein address the discharge of native soil material into the ephemeral drainage, consisting of a total of 0.067 acres, on Tract 27251. The proposed Order requires the discharger to proceed with the proposed mitigation.
8. The Water Quality Control Plan for the Santa Ana River Basin (1995) does not specifically designate beneficial uses for the isolated surface waters on the project site. Based on Regional Board staff assessment of the site, the requirements of State Board Resolution No. 88-63, and the applicant's biological assessments, beneficial uses that are existing or attainable for the drainage include:
  - a. Groundwater recharge (GWR)
  - b. Wildlife habitat (WILD)
9. This Order regulates the discharge of fill material to waters of the State. The discharger submitted an application for CWA section 401 Water Quality Standards Certification on May 31, 2005 that describes the proposed fill to non-federal waters of the State. The application has been accepted as a Report of Waste Discharge.
10. Waste Discharge Requirements (WDRs) are necessary to address the impacts of the fill on the beneficial uses of the non-federal waters of the State.
11. The Regional Board has considered anti-degradation pursuant to State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions.
12. The Board has notified the discharger and other interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity for public hearing and opportunity to submit their written views and recommendations.
13. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

**IT IS HEREBY ORDERED** that the discharger, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

**A. DISCHARGE SPECIFICATIONS:**

1. No activities associated with the project shall cause or threaten to cause a nuisance or pollution as defined in Section 13050 of the California Water Code.
2. The discharge of any substance in concentrations toxic to animal or plant life is prohibited.
3. The groundwater in the vicinity of the project shall not be degraded as a result of the project activities or placement of fill for the project.
4. The discharge of fill materials shall be limited to inert materials, as defined in Section 20230, Division 2, Title 27. The discharge of fill material other than native soil shall be only with the prior approval of the Executive Officer.

**B. DISCHARGE PROHIBITIONS:**

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters, except as authorized by this Order, is prohibited.
4. Discharges to surface waters of wastes or pollutants that are not otherwise regulated by a separate National Pollutant Elimination System (NPDES) permit, is prohibited.

**C. PROVISIONS:**

1. The discharger shall purchase one-quarter (0.25) acre of mitigation credit from the Santa Ana Watershed Association (SAWA) towards the eradication of *Arundo donax*. The purchase shall include a minimum of 6-years of follow-on maintenance and shall not be applied to lands where initial removal of *Arundo donax* was funded using State Bond funds. Evidence of the purchase shall be provided to the Executive Officer no later than 60-days following initial grading in waters of the State.
2. The discharger shall remove from the site any waste or fill material found to contain substances that may have a deleterious effect on water quality, such as

metals, petroleum products, or pesticides, and dispose of unacceptable wastes in a manner acceptable to the Executive Officer.

3. The discharger must comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the California Water Code and may constitute a violation of the CWA and its regulations, and is grounds for enforcement action, termination of this Order, revocation and re-issuance of this Order, denial of an application for re-issuance of this Order; or a combination thereof.
4. The discharger shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.
5. The provisions of this Order are severable, and if any provision of this Order, or the application of any provisions of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order shall not be affected thereby.
6. The filing of a request by the discharger for modification, revocation and re-issuance, or termination of this Order or a notification of planned changes or anticipated noncompliance does not stay any requirements of this Order.
7. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, nor protect the discharger from liabilities under federal, state, or local laws, nor guarantee the discharger a capacity right in the receiving waters.
8. This Order does not convey any property rights of any sort, or any exclusive privilege.
9. This Order is not transferable to any person except after notice to, and approval by, the Executive Officer. The Regional Board may require modification or revocation and re-issuance of this Order to change the name of the discharger.
10. In the event of any change in control or ownership of land or waste discharge facility presently owned or controlled by the discharger, the discharger shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be forwarded to the Regional Board.
11. The Regional Board and other authorized representatives shall be allowed:
  - a. Entry upon premises where a regulated facility or activity is located or conducted, or where records are kept under the requirements of this Order;
  - b. Access to copy any records that are kept under the requirements of this Order;



- c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
- d. To photograph, sample and monitor for the purpose of assuring compliance with this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on September 30, 2005.

---

Gerard J. Thibeault  
Executive Officer